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Filed in Both  
5475-5489  
Original in  
5489

August 16, 2004

Office of General Counsel  
Attn: Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination and Legal Administration  
The Federal Election Commission  
999 E. St. N.W.  
Washington, D.C. 20463

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COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
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In re: MUR: 5489

Dear Mr. Jordan,

I have enclosed Nader for President 2004's response to Complaint MUR 5489 recently filed with your office. Please note that I am acting as counsel for both the Committee and for Carl Mayer, Treasurer.

I would request that you review this instant Complaint MUR 5489 in conjunction with Complaint MUR 5475, which concerns certain related matters in connection with the Oregon campaign.

If you have any questions, please feel free to contact me.

Thank you for your consideration of our response.

Sincerely,



Bruce I. Afran

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Re: **MUR 5489: Complaint Filed July 22, 2004**

This is the second complaint filed with the Federal Elections Commission (the "Commission") in connection with the Nader Convention in Oregon.

The first complaint was docketed as MUR 5475 and dated July 2, 2004. Nader for President 2004 duly responded to said first complaint.

**Background of the Complaint**

These complaints have their origin in a provision of Oregon law that permits ballot access if 1,000 (one thousand) registered voters meet on the same day at the same location to nominate a candidate. The Nader campaign convened such a convention on June 26, 2004 with the goal of obtaining 1,000 signatures from Oregon voters in support of Ralph Nader's candidacy.

In the first complaint, MUR 5475, the complainant asserted that certain Republican-affiliated groups had used their own resources to enlist volunteers to attend the Nader convention and cast ballots for Ralph Nader. The apparent goal of these Republican activists is to place Nader on the Oregon ballot in the belief that he will supposedly draw votes from Democrat John Kerry, thereby aiding the Republican re-election campaign of President Bush.

Yet nowhere in the first complaint, MUR 5475, did the complainant suggest any factual nexus or connection between the Nader campaign and the Republican activists. To the contrary, the first complainant suggested only that the Nader campaign was "aware" of such activity.

Nader for President 2004 replied to this first complaint that mere "awareness" is not "conduct" that comprises coordination under the Commission's regulations. As noted in the campaign's response,

"a campaign is likely to be "aware" of nearly all public political acts in a media-conscious society. But mere "awareness" of such acts does not give rise to the acceptance of an in-kind contribution in the absence of "conduct" by a campaign pursuant to section 109.21(d), none of which occurred and none of which is alleged by the complainant. If mere "awareness" was to be the standard by which acceptance of in-kind contributions is to be determined, virtually no presidential campaign could avoid accepting improper contributions since nearly all independent efforts eventually come to public notice.

See, Nader for President 2004 Response to Complaint MUR 5475.

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## **The New Oregon Complaint**

Just like the first complaint, this new, second complaint makes no factual assertions against the Nader campaign. Again, like the first, this second complaint is devoid of any factual nexus or connection between the Nader campaign and these Republican activists in Oregon.

### **a. The assertions concerning the Nader nominating convention.**

This new complaint, based solely on newspaper articles with no direct factual knowledge by the complainant, states that Republicans in Oregon made phone calls and engaged in other activity designed to bring out voters to the Nader Convention with the purpose of aiding the Nader campaign in attracting the minimum of one thousand (1,000) registered voters need to place Ralph Nader on the Oregon ballot. No facts are offered demonstrating or even suggesting any factual connection or involvement between the Nader campaign and these groups. Despite this absence of factual nexus between the Nader campaign and these Republican groups, the complainant states at paragraph 9 that "The Nader Committee has accepted and welcomed this assistance from BC '04 and CSE."

The support for this blunt assertion is the complainant's reference to Exhibits A and B to the Complaint.

But a review of Exhibits A and B shows no evidence establishing a factual connection between these Republican efforts and the Nader campaign.

Exhibit A is an article from The Oregonian, a daily newspaper published in Portland, discussing Republican efforts to attract participants to the Nader convention. The sole reference in the article to the Nader campaign is a comment from a campaign aide, Greg Kafoury, who responded to a question about the Republican efforts by saying, "It's a free country. People do things in their own interest".

Kafoury's remark does nothing to establish coordination between the Nader campaign and the Republican activists, but is a simple statement of fact that the Republicans are free to act as they see fit. If anything, Kafoury's remark strengthens the presumption that the Republicans are acting on their own accord.

As for Exhibit B, it contains the same quoted remark from Kafoury that appears in Exhibit A, but with the added statement that Kafoury "said he's had no contact with the two conservative groups that have been calling people..."

As with Exhibit A, these comments further reinforce the fact that the Nader campaign has no connection with these Republican groups in Oregon. Nowhere does the complainant dispute Kafoury's remark that "he's had no contact with the two conservative groups" and nowhere does the complainant offer any factual evidence that the Nader campaign

has had contact with such groups. To the contrary, it is apparent from the tenor of these remarks that the Republicans are acting on their own accord.

Count 3 of the Complaint states that "the phone bank ...was unlawfully coordinated by BC '04 and CSE with the Nader campaign". See Complaint at para. 27.

Again, the sole support for this claim of "coordination" is the article attached as Exhibit A to the complaint which reports that the Nader campaign "saw nothing wrong with the Republican outreach efforts". See Complaint at para. 28 and Exhibit A attached thereto.

Mr. Nader, however, has repeatedly deplored major party interference in the campaign. For example, by campaign press release dated July 21, 2004, a day before this complaint was filed, Ralph Nader urged the Democratic and Republican parties to "stop maliciously trying to entangle our campaign with their own desperate maneuvers". "We want them to get off our back, leave us alone, stop trying to infiltrate our campaign and let us compete in an already rigged two party political system." A stronger and more comprehensive denunciation and disavowal of major party antics and interference cannot be found.

Nevertheless, the Complainant states at paragraph 28 that "given the Nader campaign's refusal to distance itself from these efforts, it appears that the Nader campaign suggested or requested the phone bank or, at a minimum, assented to CSE's support." Complaint at para. 28.

This bald and inaccurate accusation that the Nader campaign refused to "distance" itself from the Republican efforts is based on the single news report in Exhibit B that the campaign said it "saw nothing wrong with the Republican outreach efforts" and Kafoury's additional comment that "It's a free country. People do things in their own interest". Complaint, Exhibits A and B. Far from supporting the complainant's claim of coordination, these comments comprise nothing more than a recognition by the campaign that it is powerless to stop these efforts and that the Constitution protects Republicans' right to act in their own self-interest.

None of this represents "conduct" comprising "coordination" under 11 C.F.R. 109.21(d), which provides in detail the specific types of conduct that must exist for coordination to be deemed to have occurred. Nowhere in section 109.21(d), or anywhere else in the regulations, is there any provision that statements by a campaign official recognizing the right of other persons to act politically comprises a "suggestion", "request" or "assent" to their support. To the contrary, the regulations protect and respect the right of political groups to aid another campaign so long as the campaign does not engage in any of the proscribed acts provided for in section 109.21(d), none of which have been alleged by the complainant.

Kafoury's reported statements are not "conduct" under section 109.21(d) but are mere expression of free speech wholly protected under the First Amendment. Indeed, if such comments by campaign officials were to be the basis of charges of improper

“coordination” between campaigns, then campaign officials would be debarred from making any non-adversarial comments to the media about competing campaigns. The mere fact that Kafoury expressed respect for the right of Republicans to do as they see fit, does not comprise “conduct” leading to “coordination” under 11 C.F.R. 109.21(d).

**b. The assertions concerning the Nader petition drive.**

The final accusation against the Nader campaign is similarly without support.

The complaint notes that the Nader campaign has begun a petition drive to place Nader on the ballot by petition. Complaint at para. 12. The complaint asserts that CSE (one of the Republican activist groups) plans “to collect signatures on Ralph Nader’s petitions for independent nomination...”. See Complaint at para. 13 [emphasis added].

The sole source for this assertion is again a news article reporting that CSE plans “to collect 15,000 signatures to ensure Nader is on Oregon’s ballot”. See Exhibit E to the Complaint. Again, the news article reports only that CSE told a reporter that it plans to collect signatures.

At paragraph 41, the Complaint states that

“as Chief Sponsor, Ralph Nader necessarily controls the process of submitting petitions for independent nomination to the Secretary of State’s office. Accordingly, if the Nader campaign submits signatures collected by CSE, the election law violation outlined above will necessarily have occurred. [emphasis added]”.

This assertion is conspicuously framed in the future, speculative tense, stating that “if” the Nader campaign submits signatures collected by Republicans election law violations “will necessarily have occurred”. The complainant does not assert that the Nader campaign “has” submitted signatures collected by republican groups but only that “if” it does there will be a resulting violation.

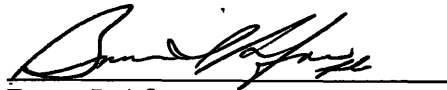
Based on this speculative framing of the complaint, there is obviously no present violation asserted by the complainant in connection with the petition drive and no basis for the Commission to engage in any further action.

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**Conclusion**

As the foregoing submission shows, there is no basis for the Commission to proceed further on the complaint.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce I. Afran", is written over a horizontal line.

Bruce I. Afran  
Counsel for  
Nader for President 2004  
Carl Mayer, Treasurer

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